

JAMES J. McFARLANE

IBLA 82-1202

Decided October 21, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 49571.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

APPEARANCES: James J. McFarlane, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James J. McFarlane appeals the July 28, 1982, decision of the California State Office, Bureau of Land Management (BLM), which rejected the evidence of annual assessment work for 1981, and declared the unpatented Honest John placer mining claim, CA MC 49571, abandoned and void because the evidence of the annual assessment work had not been filed on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The evidence of assessment work was received January 4, 1982.

Appellant states that he mailed the proof of labor on December 23, 7 days before the due date, with expectation that it would reach BLM by December 30, and that the delay until January 4 must have been caused by the Christmas mail. However, the transmittal letter which accompanied the proof of labor is dated December 29, 1981.

[1] Although the document may nevertheless have been mailed on or prior to December 30, 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the envelope was delayed by the Postal Service, that fact would not excuse appellant's failure to comply with the stated regulations. Wade McNeil, 66 IBLA 228 (1982); Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility for and bear the consequences of untimely delivery of his filings. Don Chris A. Coyne, 52 IBLA 1 (1981); Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Appellant may wish to confer with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Bernard V. Parrette  
Administrative Judge  
Alternate Member

